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JAN 19 2005

OFFICE OF THE DIRECTOR
TC 3600

In re Application of
Gerald E. Fought
Application No. 10/044,826
Filed: October 19, 2001
For: WHEELCHAIR SUSPENSION HAVING
PIVOTAL MOTOR MOUNT

: DECISION ON PETITION
: TO WITHDRAW THE
: HOLDING OF ABANDONMENT

This is a decision on applicant's Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on August 16, 2004.

The petition is DISMISSED.

A review of the file record indicates that the application was held abandoned for failure to timely file a response to the Office action mailed April 29, 2003, which set a three-month shortened statutory period. The application became abandoned at midnight on July 29, 2003, and a Notice to that effect was mailed on November 18, 2003.

Petitioner contends that a response was filed on October 29, 2003 by facsimile transmission. In support thereof, petitioner submits, *inter alia.*, a copy of a response and request for extension of time, each bearing a Certificate of Transmission signed by Nenad Pejic and dated October 29, 2003. Petitioner also has submitted a copy of a USPTO return facsimile receipt, dated October 29, 2003, that identifies the application by serial number. Since the USPTO return facsimile receipt does not also identify the type of response that was filed (e.g., amendment to the Office action of April 29, 2003, and request for three-month extension of time), it cannot be accepted as sufficient evidence of a timely filing by facsimile transmission. Thus, petitioner must rely on the Certificate of Transmission as evidence of a timely filing.

Petitioner's evidence of a timely filing based on a Certificate of Transmission is considered to be insufficient. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

- (2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512), by the person who signed the certificate.

While meeting requirement (1) above the petition fails, under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate, in this instance Nenad Pejic.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."



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KJD/rwg: 1/10/05